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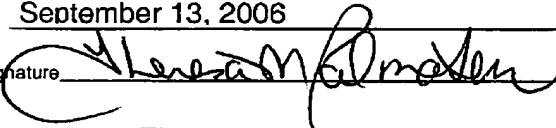

SEP 13 2006

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
<b>CERTIFICATE OF FACSIMILE</b> I hereby certify that this Pre-Appeal Brief Request For Review and Notice of Appeal are being facsimile transmitted to (571) 273-8300. on <u>September 13, 2006</u> Signature <u></u> Typed or printed name <u>Theresa M. Palmateer</u>		Application Number	Filed
		09/725,437	11/29/2000
		First Named Inventor	
		Farooq Ullah Khan	
Art Unit		Examiner	
2616		Qureshi, Afsar M.	
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.			
This request is being filed with a notice of appeal.			
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the			
<input type="checkbox"/> applicant/inventor.		Signature	
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)		David J. Gaskey	
<input checked="" type="checkbox"/> attorney or agent of record.		Typed or printed name	
Registration number <u>37,139</u>		248-988-8360	
<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34.		Telephone number	
Registration number if acting under 37 CFR 1.34 _____		September 13, 2006	
		Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			

<input type="checkbox"/> *Total of _____ forms are submitted.
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Khan 7-54

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Farooq Ullah Khan  
Serial No.: 09/725,437  
Filed: 11/29/2000  
Examiner: Qureshi, Afsar M.  
Group Art Unit: 2616  
Title: HYBRID ARQ WITH PARALLEL PACKET TRANSMISSION

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF  
Commissioner For Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicant respectfully requests review of this application prior to filing an Appeal Brief.

This request accompanies Applicant's Notice of Appeal.

There is no *prima facie* case of obviousness against any of Applicant's claims. The rejection under 35 U.S.C. §103 is based upon the proposed combination of *Subbiah, et al.* and *Wasilewski, et al.*<sup>1</sup>

There is no *prima facie* case of obviousness because there is no motivation for making the proposed combination of *Subbiah, et al.* and *Wasilewski, et al.* The Examiner proposes to take the PID of paragraphs 175, 176 and 177 of the *Wasilewski, et al.* reference and add that to the teachings of the *Subbiah, et al.* reference. That combination provides no benefit and has no use in the

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<sup>1</sup> The final Office Action discusses the proposed combination of the *Subbiah, et al.* and *Kallel* references, however, Applicant believes that to be a mistake as the combination of *Subbiah, et al.* and *Wasilewski, et al.* was applied in the non-final Office Action that followed Applicant's previous request for Pre-Appeal Brief Review. Assuming the Examiner is maintaining the rejection based upon the proposed combination of *Subbiah, et al.* and *Wasilewski, et al.*, Applicant's remarks focus on that combination first. Just in case the combination of *Subbiah, et al.* and *Kallel* requires further consideration, Applicant also addresses why that proposed combination does not establish a *prima facie* case of obviousness.

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*Subbiah, et al.* arrangement. Without any benefit, there is no motivation for making the combination and no *prima facie* case of obviousness.

The *Subbiah, et al.* reference is concerned with demultiplexing packets received at a node and then remultiplexing them based upon transmission to a common second node. *Subbiah, et al.* only teach using a sequence number to identify where in a sequence a particular mini-packet should fit for the remultiplexing accomplished in the *Subbiah, et al.* reference. The sequence number field 214 in the *Subbiah, et al.* reference indicates a sequence of transmissions from a single source that has nothing to do with indicating a retransmission of any packet. For example, there is no discussion of altering or setting the sequence number responsive to an indication that a mini-packet has not been received by the intended recipient. Instead, *Subbiah, et al.* only teach using the sequence number to identify where in a sequence a particular mini-packet should fit. There is no discussion in *Subbiah, et al.* regarding retransmitting any packets (lost or not).

The Examiner proposes to add the PID of *Wasilewski, et al.* to the arrangement of *Subbiah, et al.* The PID of *Wasilewski, et al.* is for indicating whether a number of packets belong to one sub-category or another (e.g., video 1 or audio 1). Such a PID does not have any usefulness in the mini-packet switching for IP networks described in the *Subbiah, et al.* reference. The PID of *Wasilewski, et al.* is used for cable television systems to indicate whether a particular packet contains video or audio data. That has nothing to do with mini-packet switching (i.e., demultiplexing and then remultiplexing mini-packets) used in the *Subbiah, et al.* reference. In other words, the PID of the *Wasilewski, et al.* reference has no usefulness in the *Subbiah, et al.* arrangement. Without any usefulness, there is no benefit to the combination. Without any benefit

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there is no motivation for making the combination. Without any motivation there is no *prima facie* case of obviousness.

Additionally, Applicant notes that the *Wasilewski, et al* reference is concerned with cable television systems. These are not the same as wireless communication systems such as that used in *Subbiah, et al.* Applicant respectfully submits that the *Wasilewski, et al.* reference is not analogous art and is not combinable with the *Subbiah, et al.* reference for that additional reason.

The Examiner rejected some of the claims based upon the proposed combination of *Subbiah, et al.*, *Wasilewski, et al.* and the *Rathonyi, et al.* reference. The base combination of *Subbiah, et al.* and *Wasilewski, et al.* cannot be made for the reasons already given. Proposing to add the teachings of the *Rathonyi, et al.* reference does nothing to remedy the defect in that proposed base combination. There is no *prima facie* case of obviousness against any of Applicant's claims.

As noted above, the final Office Action does mention the proposed combination of the *Subbiah, et al.* and *Kallel* references. That proposed combination was already considered during Applicant's previous request for Pre-Appeal Brief Review, which resulted in a determination that prosecution would be reopened. The proposed combination of the *Subbiah, et al.* and *Kallel* references cannot be made. The *Kallel* reference is concerned with an incremental redundancy "analyzed in conduction with sequential decoding using a timeout condition" (page 1588). The symbol metric of *Kallel* is a complex formula of probabilities of receiving a group of symbols to a group of repeated bits. The repetition symbol metric on page 1590 of *Kallel* and the approach of *Kallel* provide no benefit to the *Subbiah, et al.* arrangement, which is for demultiplexing and remultiplexing for transmission from one node to a common second node. Because the symbol

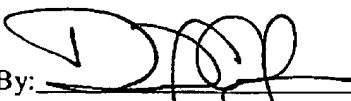
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metric of *Kallel, et al.* has no usefulness in *Subbiah's* arrangement, there is no benefit to the proposed combination. Without any benefit there is no motivation for making the combination. Without any motivation there is no *prima facie* case of obviousness.

None of the combinations proposed by the Examiner can be made. None of them establish a *prima facie* case of obviousness. Applicant respectfully submits that this case is in condition for allowance.

Respectfully submitted,

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Dated: September 13, 2006

**CERTIFICATE OF FACSIMILE**

I hereby certify that this Pre-Appeal Brief Request for Review relative to Application Serial No. 09/725,437 is being facsimile transmitted to the Patent and Trademark Office (Fax No. 1-571-273-8300) on September 13, 2006.

  
Theresa M. Palmateer

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